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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: :
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APPLICATION OF CA INVESTMENT (BRAZIL) S.A. : Misc. Case No. _____
FOR AN ORDER TO TAKE DISCOVERY :
FOR USE IN FOREIGN PROCEEDINGS :
PURSUANT TO 28 U.S.C. § 1782. :
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**EX PARTE APPLICATION OF CA INVESTMENT (BRAZIL) S.A.
FOR AN ORDER TO TAKE DISCOVERY
FOR USE IN FOREIGN PROCEEDINGS PURSUANT TO 28 U.S.C. § 1782**

Applicant CA Investment (Brazil) S.A. (“Applicant”) hereby applies for an order to take discovery for use in foreign proceedings pursuant to 28 U.S.C. § 1782 (the “Application”), based upon the Declaration of Claudio Laert Cotrim Passos, dated March 20, 2019, the Declaration of Kenneth R. Puhala, dated March 20, 2019, and Applicant’s Memorandum of Law. The Application should be granted because, as demonstrated in the Memorandum of Law and Declarations submitted in support thereof, (1) the statutory requirements of 28 U.S.C. § 1782 are satisfied, and (2) the discretionary factors identified by the United States Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.* 542 U.S. 241 (2004) weigh in favor of granting the Application.

In sum, the statutory requirements of 28 U.S.C. § 1782 are satisfied: (1) the discovery is sought from entities that are headquartered in New York, New York, *i.e.*, (a) White & Case LLP, (b) BDO USA, LLP, (c) The Bank of New York Mellon Corporation, (d) Moody's Investors Service, Inc. and (e) Fitch Ratings, Inc. (collectively, the "Respondents"); (2) the discovery sought is for use in pending court proceedings in Singapore and Brazil and a pending arbitration proceeding in Brazil; and (3) Applicant is an interested person, as it is a party in each of those foreign proceedings. Moreover, the discretionary factors articulated in *Intel* weigh in favor of granting the Application: (1) the Respondents are not parties in the legal proceedings in Singapore or Brazil and, therefore, are beyond the jurisdiction of the foreign tribunals; (2) the foreign tribunals will be receptive to the evidence obtained through 28 U.S.C. § 1782; (3) Applicant is seeking discovery from the Respondents in good faith for use in the foreign proceedings; and (4) the discovery requested is not unduly intrusive or burdensome; rather, through the proposed subpoenas, Applicant seeks discovery relevant to and for use in the foreign proceedings through narrowly-tailored document requests, *i.e.*, a single document request directed to each Respondent.

Applications under 28 U.S.C. § 1782 are "customarily received and appropriate action taken with respect thereto *ex parte*," *In re Letters Rogatory from Tokyo Dist., Tokyo, Japan*, 539 F.2d 1216, 1219 (9th Cir. 1976), because "witnesses can . . . raise[] objections and exercise[] their due process rights by motions to quash the subpoenas." *Id.*; *see also In re Gemeinschaftspraxis Dr. Med. Schottdorf*, No. Civ. M19-88 (BSJ), 2006 U.S. Dist. LEXIS 94161, at *10 (S.D.N.Y. Dec. 29, 2006) (denying motion to quash subpoena issued *ex parte* under 28 U.S.C. § 1782); *In re Letter of Request from Supreme Court of Hong Kong*, 138 F.R.D. 27, 32 n.6 (S.D.N.Y. 1991) ("Indeed, such *ex parte* applications are typically justified by the fact

that the parties will be given adequate notice of any discovery taken pursuant to the request and will then have the opportunity to move to quash the discovery or to participate in it.”).

Applicant, therefore, respectfully requests that this Court grant the Application and issue an order in the form of the proposed order attached hereto as Exhibit 1, providing that:

1. Applicant is authorized, pursuant to 28 U.S.C. § 1782, to take discovery from the Respondents relating to the issues identified in the Application, including:

- (a) issuing the subpoenas for the production of documents in substantially the form attached to this Application as Exhibits 2-6; and
- (b) issuing additional subpoenas for the production of documents and/or depositions of Respondents as Applicant reasonably may deem appropriate and as are consistent with the Federal Rules of Civil Procedure; and

2. the order is without prejudice to the Respondents’ rights to assert objections in relation to the subpoenas.

Dated: March 20, 2019
New York, New York

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

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